UNITED STATES OF AMERICA BEFORETHE NATIONAL LABOR RELATIONS BOARD

ROAD SPRINKLER FITTERS UNITED
ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE UNITED
STATES, AND CANADA, AFL-CIO,
LOCAL UNION NO. 669,

and

COSCO FIRE PROTECTION, INC.,

and : Case No. 21-CE-374

NATIONAL FIRE SPRINKLER ASSOCIATION .:

Party in Interest,

and

FIRETROL PROTECTION SYSTEMS, INC.,

Party in Interest.

...........

LOCAL 669'S REPLY TO THE CHARGING PARTY'S OPPOSITION TO ITS MOTION FOR SUMMARY JUDGMENT

Respondent Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO ("Local 669" or "the Union"), by its undersigned counsel, submits this Reply to the Opposition by Charging Party Cosco Fire Protection Inc. ("Cosco") to the Union's Motion for Summary Judgment. This memorandum is filed separately from the Union's Reply to the General Counsel's Opposition because the Charging Party's Opposition had not been received when the latter was filed with the Board on September 2, 2008. As we show below, the Charging Party's opposition does not provide any additional bases for denying the Union's Motion.

Notwithstanding the Charging Party's strenuous attempts to create the

illusion of disputes of material fact (Charging Party Opp. 2-3),¹ both the Charging Party and the General Counsel have now conceded the Union's argument that the determinative issue in this case is a single question of law: whether the authorization card check/neutrality clause in Addendum C of the parties' 2007 - 2010 national collective bargaining agreement is "unlawful on its face." Charging Party Opp. 1; G.C. Opp. 2; Complaint ¶9(c). See Heartland Industrial Partners LLC (United Steelworkers of America), 348 NLRB No. 72 (2006), Slip op. at 4; General Teamsters Local 982 (J.K. Barker Trucking Co.), 181 NLRB 515, 517 (1970), aff'd 450 F.2d 1322 (D.C. Cir. 1971). If the language in question "is not clearly unlawful on its face," the Complaint should be dismissed on the basis that, as a matter of law, the disputed clause is properly to be interpreted "to require no more than what is allowed by law." Id.

The disposition of the Complaint does not require the adjudication of any extrinsic "facts" which are not material to the Board's resolution of the dispositive issue of law in this case, nor does it warrant the time, expense and delay of an evidentiary hearing. Central Pennsylvania Regional Council of Carpenters (Novinger's Inc.), 337 NLRB 1030, 1030 (2002) (where contract language is

¹ A close reading of the Charging Party's opposition indicates that it has not actually *disputed* the Union's status as a national labor organization, its multistate territorial jurisdiction or the Charging Party's status within the national multiemployer bargaining unit (facts all well known to the Charging Party and not disputed by the General Counsel), but has only complained over the lack of supporting evidence. To save paper, the Union only enclosed the relevant portions of the 2007-2010 national collective bargaining agreement in support of its Motion rather than the entire agreement. <u>See</u> Local 669 Motion Attachment 1. We submit herewith several additional pages of Attachment 1 which verify all of these points. <u>See</u> Attachment 1 hereto at pp. 7-11, 42 (Cosco's representative at the Local 669/NFSA bargaining table was Mr. Kern).

alleged to violate NLRA Section 8(e) on its face, it is unnecessary for the Board to address contextual factual issues). <u>See also Carpenters Local 112 (Summit Valley Industries)</u>, 217 NLRB 902, 902 n.5 (1975).

The Charging Party has attempted to embellish the General Counsel's case by adding allegations that are not to be found anywhere in the Complaint, i.e. relating to prior arbitrations and work stoppages (Charging Party Opp. 3-4), but it is the General Counsel's determination which allegations are or are not to be litigated in this proceeding. <u>E.g.</u>, <u>Teamsters Local 203 (Union Interiors, Inc.)</u>, 298 NLRB 315, 315 (1989), citing <u>Castaways Hotel & Casino</u>, 284 NLRB 612, 614 (1987).

Of course, these allegations do not have anything to do with the resolution of the only legal question raised by the General Counsel's Complaint -- whether or not the authorization card check/neutrality clause in Addendum C of the parties' 2007-2010 national collective bargaining agreement is "clearly unlawful on its face." Heartland Industrial Partners, Slip op. at 4.

And, as to the Charging Party's disingenuous "objection" to the Union's formal and unconditional disclaimer of what the General Counsel alleges to be the only unlawful object in its Complaint because it was transmitted directly to the NFSA, as the multi-employer bargaining representative of the Charging Party and other signatory contractors (Charging Party Opp. 3), sending it to the NFSA has precisely the same effect as sending it separately to the "Employer members of the multi-employer association who are affected by the [allegedly] unlawful clause," especially given the NFSA's contractual right to intervene and participate

in any arbitrations against multi-employer unit contractors under the 2007-2010

national agreement. Attachment 1 hereto, at p 3.

Respondent finds inexplicable the opposition by the General Counsel and the Charging Party to submission of this case, directly to the Board, for a timely resolution of what all parties now agree is the single question of law presented by the Complaint. Nevertheless, Respondent Local 669 urges the Board to proceed to determine whether or not the authorization card check/neutrality clause in Addendum C of the parties' 2007 -2010 national collective bargaining agreement

Dated: September 4, 2008

is "clearly unlawful on its face."

Respectfully submitted,

William W. Osborne, Jr.

William Wishom h.

Jason J. Valtos

OSBORNE LAW OFFICES, P.C.

4301 Connecticut Avenue, N.W.

Suite 108

Washington, D.C. 20008

(202) 243-3200

(202) 243-3207 fax

Counsel for Local 669

4

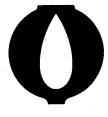
CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2008, I filed Local 669's Reply to the Charging Party's Opposition to its Motion for Summary Judgment with the Executive Secretary of the National Labor Relations Board via the electronic filing portal of the Board's website and, after so notifying each of the Parties listed below via telephone, served a copy of Local 669's Reply upon each Party via UPS Overnight Delivery:

John Viniello, President National Fire Sprinkler Association 40 Jon Barrett Road Patterson, NY 12563 James F. Small
Regional Director, Region 21
National Labor Relations Board
888 South Figueroa Street
Ninth Floor
Los Angeles, CA 90017-5449

Firetrol Fire Protection Attn: Blake Vance, Chief Financial Officer 10725 Sandhill Road, Suite 105 Dallas, TX 75238 Alan Berkowitz Bingham McCutchen, LLP Three Embarcadero Center San Francisco, CA 94111 Counsel for Cosco Fire

Jason J. Valtos



National Fire Sprinkler Association, Inc.

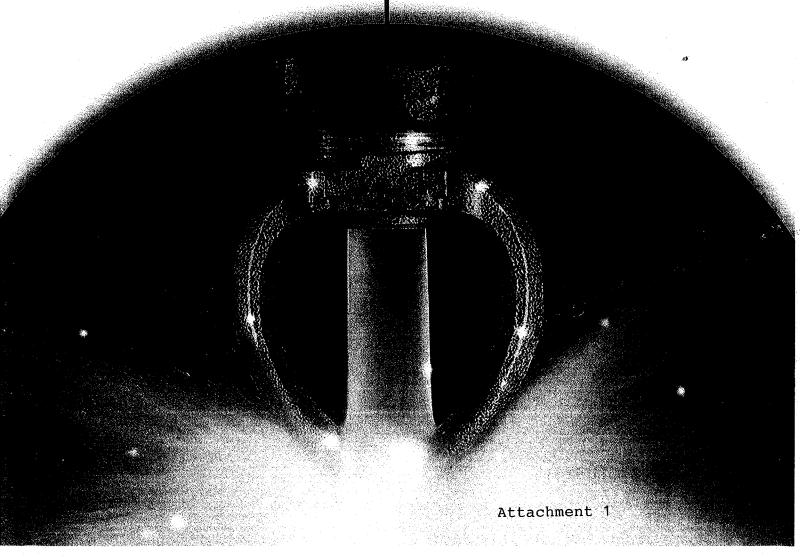
Covering Rules, Regulations & Working Conditions Apprenticeship Standards



Road Sprinkler Fitters Local Union 669

America's Sprinkler Local

April 1, 2007



AGREEMENT BETWEEN NATIONAL FIRE SPRINKLER ASSOCIATION, INC.

and

ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, COLUMBIA, MARYLAND

OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA

THIS AGREEMENT is made this 14th day of April, 2007 (and constituting revision of the original Agreement of April 6, 1915, and revisions and renewals thereof) between National Fire Sprinkler Association, Inc. and Road Sprinkler Fitters Local Union 669 (hereinafter referred to as "Union").

ARTICLE 1

The National Fire Sprinkler Association, Inc., a body corporate under authority from its contractor members pursuant to its By-Laws, has negotiated and signed this Agreement for and on behalf of its contractor members that have given the National Fire Sprinkler Association, Inc. written authority to negotiate this Collective Bargaining Agreement, each of whom is the "Employer" party to this contract. A list of the names of those contractor members authorizing National Fire Sprinkler Association, Inc. to negotiate and execute this Agreement and on whose behalf it is negotiated and executed is attached hereto and made a part hereof.

It is understood that the National Fire Sprinkler Association, Inc. is not responsible for the actions of individual contractor members relative to the application of and compliance with this Agreement. The National Fire Sprinkler Association, Inc. has the exclusive right to appoint employer representatives to all joint committees or trust boards that are in existence and/or come about as a result of the terms and conditions of this Collective Bargaining Agreement. The National Fire Sprinkler Association, Inc. may, at its option, with the approval of the contractor member participate in any grievance involving said contractor member who has given the National Fire Sprinkler Association, Inc. authority to negotiate this Collective Bargaining Agreement.

It is further understood and agreed that any Employer bound by the terms of this Agreement by virtue of the authority described in the above paragraph agrees that, if the contractor member withdraws his membership from National Fire Sprinkler Association, Inc. or his membership is terminated for any reason, the contractor member shall be bound by all the terms and conditions of the Agreement for the balance of the term of this Agreement. The National Fire Sprinkler Association, Inc. agrees to notify the Union when any contractor member withdraws or is terminated from the National Fire Sprinkler Association, Inc. within twenty (20) days of such action. The National Fire Sprinkler Association, Inc. shall also notify the Union of any new member joining the National Fire Sprinkler Association, Inc. within a period of twenty (20) days from receipt of application, subject to subsequent Board of Directors approval, and shall furnish the Union with a copy of the signed agreement whereby the Company authorizes the National Fire Sprinkler Association, Inc. to represent it in Collective Bargaining.

ARTICLE 5

HIRING OF EMPLOYEES: Should the Employer fail to secure unemployed 669 Sprinkler Fitter Journeymen and Apprentices from any source available to him, he shall contact the Union requesting a referral of qualified unemployed Sprinkler Fitter Journeymen or Apprentices residing within one hundred (100) miles of the job site. The Union shall be given seventy-two (72) hours, from time of notification to refer qualified unemployed Sprinkler Fitter Journeymen or Apprentices to perform the work involved.

If the Union fails for any reason to refer unemployed qualified Sprinkler Fitter Journeymen or Apprentices within seventy-two (72) hours, the Employer may hire new Apprentices in accordance with the ratios established in this Agreement and subject to applicable Apprentice selection procedures.

The Employer shall have the right to accept or reject for just cause, any job applicant and to solicit from among applicants those, who in his estimation, are the best qualified.

Journeymen Sprinkler Fitters shall have the right to solicit their own jobs.

Nothing contained herein shall prevent the transfer of an employee from one job to another.

The parties recognize the legitimate interest of preserving and maintaining employment in the area in which work is being performed. Local employees shall therefore be the last laid off when an Employer lays off on a job.

NONDISCRIMINATION: There shall be no discrimination with regard to race, color, religion, sex, age, or national origin by either the Union or the Employer relative to employment or conditions of employment. Contractors bound by the terms of this Agreement are likewise bound by any Affirmative Action Plans negotiated with governmental agencies by the National Fire Sprinkler Association, Inc. and Local Union 669. Wherever used in this Agreement, the masculine pronoun is understood to refer to both genders.

ARTICLE 6

This Agreement applies to the United States, and Off-Shore Drilling operations, except in the territory established as of April 1, 2007, covered by the local agreements in Baltimore-536, Boston-550, Chicago-281, Cleveland-120, Detroit-704, Kansas City-314, Los Angeles-709, Milwaukee-183, Minneapolis-St. Paul-417, Newark-696, New York-638, Philadelphia-692, Pittsburgh-542, St. Louis-268, San Francisco-483, Seattle-699, and the states of Florida-821 and Connecticut-676. It is agreed that the contractor members who are subscribers to this Agreement shall, when performing work within the jurisdiction of any other Sprinkler Fitters Local Union, adhere to and be bound by the terms and conditions of the Collective Bargaining Agreement negotiated by the National Fire Sprinkler Association, Inc. with these other Sprinkler Fitters Local Unions.

OFF-SHORE DRILLING OPERATIONS: The following conditions of employment shall apply to off-shore drilling operations:

Travel expenses as applicable under Article 11 of the Agreement shall be paid from the employee's residence to the point of embarkation (i.e., boat landing, helicopter pad, etc.) servicing the structure on which the job is located. Time spent from the point of embarkation to the structure and from the structure to the point of embarkation shall be considered hours worked. Travel expense at job completion will be applied as provided under Paragraph (E), Article 11 of the Agreement.

Subsistence as applicable under Article 11 of this Agreement shall be paid to the point of embarkation.

When an employee is required to live on the structure, he shall be furnished meals and lodging free of charge. Where meals and lodging are provided, no payment shall be paid under Article 11, Paragraphs (B), (C) and (D).

Hours of work including shifts, starting time, meal periods, etc., shall conform to practice on the structure.

Overtime at the rate of double the appropriate hourly rate shall be paid for hours worked outside the regularly scheduled work shift as established on the structure.

The hourly rate for Journeymen and Apprentices at the point of embarkation shall be the hourly rate for work performed on the structure and applicable travel expense.

In no case shall an employee be required to remain on the structure for more than fourteen (14) consecutive calendar days.

ARTICLE 7

WAGES: It is agreed that the hourly wage rate for Sprinkler Fitters shall apply to jobs in the states effective April 1, 2007 for the duration of the Agreement:

Wage Rate

In states/districts where Local 669 members have already enacted an Industry Advancement Fund, or during the life of the Agreement vote to adopt an Industry Advancement Fund, the hourly contribution to those Funds will be deducted from the wages listed below and treated the same as union dues under this Agreement. The states currently affected are in **bold underline** below and the rates applicable to each state or portion of state can be found following the "Counties" section below.

	Effective	Effective	Effective	Effective
	4/1/07	10/1/07	4/1/08	4/1/09
<u>Alabama</u>	\$22.60		\$22.85	\$23.05
Alaska	\$40.05		\$41.05	\$42.05
Arizona	\$27.50		\$28.90	\$30.35
<u>Arkansas</u>	\$22.80		\$23.25	\$23.70
California (1)	\$31.15		\$32.15	\$33.15
California (2)	\$31.35		\$32.65	\$33.85
California (3)	\$31.40		\$32.85	\$34.25
California (4)	\$31.50		\$33.50	\$35.00
Colorado	\$30.41		\$31.81	\$33.26
Delaware	\$30.00		\$31.15	\$32.25
District of Columbia	\$28.35		\$29.35	\$30.45
<u>Georgia</u>	\$24.05		\$24.80	\$25.55
Idaho	\$27.85		\$28.70	\$29.65
Illinois	\$34.14		\$35.14	\$36.14
<u>Indiana</u>	\$32.19	•	\$33.19	\$34.19
Iowa	\$28.76		\$29.61	\$30.46
Kansas	\$28.21		\$29.06	\$29.91
Kentucky	\$27.80		\$28.65	\$29.50
<u>Louisiana</u>	\$24.67		\$25.22	\$25.77
Maine	\$24.53		\$25.23	\$25.93
Maryland	\$28.35		\$29.35	\$30.45
Massachusetts	\$33.38		\$34.98	\$36.63
<u>Michigan</u>	\$31.46		\$31.46	\$31.46
Minnesota	\$30.76		\$31.26	\$31.76
<u>Mississippi</u>	\$22.60		\$22.85	\$23.05
Missouri	\$29.84		\$30.59	\$31.34
Montana	\$27.95		\$28.55	\$29.50
Nebraska	\$28.71		\$29.56	\$30.41
Nevada (1)	\$32.95		\$34.35	\$35.75
Nevada (2)	\$33.45	\$34.05	\$36.35	\$38.60

	Effective	Effective	Effective	Effective
	4/1/07	10/1/07	4/1/08	4/1/09
New Hampshire	\$25.38		\$26.58	\$27.58
New Jersey	\$40.00		\$42.50	\$45.25
New Mexico	\$24.95		\$25.70	\$26.65
New York (1)	\$29.15		\$29.90	\$30.65
New York (2)	\$38.40		\$39.15	\$39.90
North Carolina	\$22.20		\$23.15	\$24.10
North Dakota	\$27.87		\$28.37	\$28.87
<u>Ohio</u>	\$31.00		\$31.85	\$32.70
Oklahoma	\$26.05		\$27.05	\$28.00
Oregon (D-1)	\$31.15		\$32.15	\$33.25
Oregon (D-21)	\$28.00		\$28.85	\$29.80
Pennsylvania	\$31.75		\$32.75	\$33.85
South Carolina	\$21.70		\$22.65	\$23.60
South Dakota	\$26.64		\$27.14	\$27.64
Tennessee	\$22.85		\$23.40	\$23.95
<u>Texas</u>	\$24.80		\$25.30	\$25.90
Utah	\$27.35		\$28.35	\$29.30
Vermont	\$23.58		\$24.58	\$25.53
Virginia (1)	\$24.47		\$24.97	\$25.47
Virginia (2)	\$28.35		\$29.35	\$30.45
Washington (D-1)	\$31.15		\$32.15	\$33.25
Washington (D-21)	\$27.95		\$28.80	\$29.75
West Virginia	\$28.45		\$29.25	\$30.10
Wisconsin	\$34.44		\$35.69	\$36.89
Wyoming	\$28.30		\$28.90	\$29.85

Counties

1) California (1)

Counties- Calaveras, Fresno, Kings, Madera, Mariposa, Merced, Monterey, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and portion of Kern County WEST of Highway 14.

2) California (2)

Counties- Alpine, Amador, Butte, Colusa, Del Norte, El Dorado, Glen, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, Yuba, Inyo, Los Angeles, Mono, Ventura, and portion of Kern County EAST of Highway 14.

3) California (3)

Counties- San Bernardino, Riverside, Orange, and Imperial.

4) California (4)

Counties- San Diego County.

5) Nevada (1)

Excludes Nevada counties of Clark, Nye & Lincoln.

6) Nevada (2)

Includes Nevada counties of Clark, Nye & Lincoln.

7) New York (1)

Excludes the counties of Orange, Putnam, Westchester, Sullivan, Ulster, Dutchess and Rockland.

8) New York (2)

Includes counties of Orange, Putnam, Westchester, Sullivan, Ulster, Dutchess and Rockland.

9) Virginia (1)

Excludes the counties of Fairfax, Arlington, Prince William, Loudoun, Frederick, Clarke, Stafford, Spotsylvania & City of Alexandria.

10) Virginia (2)

Includes the counties of Fairfax, Arlington, Prince William, Loudoun, Frederick, Clarke, Stafford, Spotsylvania & City of Alexandria.

* INDUSTRY ADVANCEMENT FUND PAYROLL DEDUCTION SCHEDULE

<u>STATE</u>	AMOUNT
Alabama	\$0.50/hour
Arkansas	\$0.50/hour
Georgia	\$0.50/hour
Indiana	\$0.25/hour
Louisiana	\$0.50/hour
Maine	\$0.53/hour
Massachusetts	\$0.53/hour
Michigan	\$0.15/hour
Minnesota	\$0.25/hour
Mississippi	\$0.50/hour
New Hampshire	\$0.53/hour
North Dakota	\$0.75/hour*
Ohio	\$0.50/hour
South Carolina	\$0.50/hour
South Dakota	\$0.75/hour*
Texas (District 26 only)	\$0.50/hour
Vermont	\$0.53/hour
Wisconsin	\$0.25/hour

^{*}All funds apply to hours worked by Class 5 apprentices and above, except for the North and South Dakota Fund which applies to all hours.

If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law or by any of the above-mentioned tribunals of competent jurisdiction, the remainder of this Agreement or the application of such article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative and unenforceable shall not be affected thereby.

FOR THE UNION:

Bradley M. Karbowsky

Robert W. Kuethe

John D. Bodine

Thomas W. Dumas

Michael P. Lee

Jerry D. Monk

John W. Turner, Jr.

John D. Green

John A. Laughlin

James S. Montgomery

Edward L. Zittle

FOR THE ASSOCIATION:

Alexander Gettler

Frederic Barall

James Lynch

Richard Ackley

Ted Angelo

Mark Clemons

Stephen A. Comunale

David Dixon

Dave Kern

Al Fox

Ryan Johnston

Kamran Malek

Ausmus Marburger

Kerry McVey

Gene Postma

Mark Tate

Steve Ulmer

Gary Willms